cause it is in the plural number and not in the singular, would be pushing inference to a dangerous extent, and further than we are disposed to carry it. The rule for a new trial is consequently discharged, and judgment entered for the defendants, on the plea of *nul tiel record*, and on the point reserved.

LEGAL MISCELLANY.

LEGAL PRINCIPLES.

No. III.

In our last number, we saw that in the law, as in mathematical science, one common result may frequently be deduced by different, independent processes of reasoning. Now we may further observe, that as no two correct mathematical processes will lead to opposite or conflicting conclusions, so will no two legal ones. A remembrance of this truth will always be of great service in testing the correctness of proposed legal principles.

Thus, one means by which we ascertain what is the law, is to consult that natural sense of right and justice which the Maker of us all has placed in the human mind. If there is proposed to us a legal principle, which we discover will legitimately lead to what the common understanding of mankind deems unjust, we conclude that the principle cannot and does not belong to the law. If, on the other hand, it uniformly conducts to what is just, we at once decide that it ought to be a part of our law, and set about seeing whether it really is so.

Now to establish, not merely that it ought to be, but in fact is, a principle of the law, we are not obliged to find any adjudication in which the judges have mentioned it as such, or adopted a course of argument from which we can infer so much as that it even occurred to their minds. So, on the other hand, if a judge, in a case which we know to have been correctly decided, has distinctly laid it down as a principle of the law, that does not necessarily establish it as such, though it may go far as evidence to our minds that it is. Courts

do not decide principles, but cases. All that is strictly authority, in a decision, is its legal conclusion, though it is in the highest degree satisfactory and helpful to see the course of legal reasoning by which the minds of the judges traveled to it. And if a conclusion of law is correct, we are apt to infer that the principles, or processes by which it was arrived at, are correct also; but there is nothing in the nature of things which makes this necessarily so, nor is it by any means uniformly so in fact. The good sense, or intuitive perceptions of a judge, may direct him to a right decision; but when he undertakes to show his reasons for it, he may be in fault at every step.

Yet if we suppose that all the cases in the books were correctly decided, on sound legal reasoning, still, as different processes from those employed might have brought out equally well the same results, it follows that the legal principles, which these different processes would have developed, are just as much principles of the law as if the development of them had actually been made. Suppose, then, a proposition is presented to us, and we wish to determine whether it is a principle of our law. Suppose we find, on examination, that it has never been recognized in any of the cases; but suppose we further find, that it will uniformly lead to conclusions which commend themselves as just, and, on bringing it to the test of the cases, find also that wherever it is applicable to the facts it leads to the same results which the judges arrived at by other processes of reasoning. Can any one deny that such a proposition is actually a principle of the law? It has in its favor all that any principle has; it conforms to abstract justice, and to the cases, which it harmonizes. Surely the fact, that no judge has happened to observe or mention it, cannot affect the question.

It is not only theoretically, but practically, important to understand that the courts adjudicate not principles, but cases. A failure to apprehend and appreciate this truth, has led to much embarrassment and confusion. When a judge has made up his mind how to decide a case, he arranges his reasons for the decision. In order to make his position look as strong as possible—judges being only men—he brings to its support such arguments as he can. Of these

arguments he may have a half dozen, more or less; and among them there will doubtless be one good one, and perhaps more, on which the case really reposes, while the rest are ranged along for show. Now, many lawyers do not distinguish the enunciations of judges on such occasions from legal principles. They find, indeed, that when they take these sayings for principles they are liable to be led astray; and so, growing, as they suppose, wiser by age and experience, they abandon all faith in the law as a science, and look upon it as a mere congregation of precedents, and upon those who represent it to be anything more as simple and visionary, not practical men like themselves. As well might a man who had been led into a bog by a jack-o'-lantern throw up his faith in the sun and the stars.

J. P. B.

ABSTRACTS OF RECENT ENGLISH DECISIONS.

Domicile—Anglo-Colonial Military Service—Practice—Administration of Estate.—F., of Scotch family, born in Scotland about 1766–7, married his cousin, (the plaintiff,) a Scotchwoman, in 1787, accepted a service in the East India Company's service, and went to India in 1787, being then under age. The plaintiff soon after followed him out to India, and they both remained there, he serving under his commission until 1808, when they returned to England on furlough. A paternal estate in Scotland, A., having descended upon F., on the death of his father in 1794, he proceeded thither, and gave directions to build a mansion there. In 1812, his furlough having expired, F. and the plaintiff returned to India, where he remained, serving under his commission, until 1822. The plaintiff returned to England in 1816. In 1822, F. retired upon half-pay, and took up his abode in London, at first by a weekly hiring, but in 1823 he took a long lease, which he subsequently from time to time renewed, and which was still in existence at his decease, of the premises in Sloane street. His circumstances being very greatly improved, he kept a fitting establishment of servants at Sloane street, but no fitting establishment at A., beyond a cook and gardener, and additional servants hired by the month, in Aberdeen, upon the occasions of his visits to Scotland, which, however, were very frequent, viz: six months in each year; but from 1823 to 1830 the plain-